

110TH CONGRESS  
1ST SESSION

# S. 1255

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

MAY 1, 2007

Mr. MCCAIN (for himself, Mr. KYL, Mr. THOMAS, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

## A BILL

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Arts and Crafts  
5       Amendments Act of 2007”.

6       **SEC. 2. INDIAN ARTS AND CRAFTS.**

7       (a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MIS-  
8       REPRESENTATIONS.—Section 5 of the Act entitled “An  
9       Act to promote the development of Indian arts and crafts

1 and to create a board to assist therein, and for other pur-  
 2 poses” (25 U.S.C. 305d) is amended to read as follows:

3 **“SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.**

4       “(a) DEFINITION OF FEDERAL LAW ENFORCEMENT  
 5 OFFICER.—In this section, the term ‘Federal law enforce-  
 6 ment officer’ includes a Federal law enforcement officer  
 7 (as defined in section 115(c) of title 18, United States  
 8 Code).

9       “(b) CONDUCT OF INVESTIGATIONS.—Any Federal  
 10 law enforcement officer may conduct an investigation re-  
 11 lating to a violation of this Act that occurs on land under  
 12 the jurisdiction of the Federal Government.

13       “(c) CRIMINAL PROCEEDINGS.—

14               “(1) INVESTIGATION.—

15                       “(A) IN GENERAL.—The Board may refer  
 16 an alleged violation of section 1159 of title 18,  
 17 United States Code, to any Federal law enforce-  
 18 ment officer for appropriate investigation.

19                       “(B) REFERRAL NOT REQUIRED.—A Fed-  
 20 eral law enforcement officer may investigate an  
 21 alleged violation of section 1159 of that title re-  
 22 gardless of whether the Federal law enforce-  
 23 ment officer receives a referral under subpara-  
 24 graph (A).

1           “(2) FINDINGS.—The findings of an investiga-  
 2           tion of an alleged violation of section 1159 of title  
 3           18, United States Code, by any Federal department  
 4           or agency under paragraph (1)(A) shall be sub-  
 5           mitted to—

6                       “(A) the Attorney General; or

7                       “(B) the Board.

8           “(3) RECOMMENDATIONS.—On receiving the  
 9           findings of an investigation under paragraph (2), the  
 10          Board may—

11                      “(A) recommend to the Attorney General  
 12                      that criminal proceedings be initiated under  
 13                      section 1159 of title 18, United States Code;  
 14                      and

15                      “(B) provide such support to the Attorney  
 16                      General relating to the criminal proceedings as  
 17                      the Attorney General determines to be appro-  
 18                      priate.

19          “(d) CIVIL ACTIONS.—In lieu of, or in addition to,  
 20          any criminal proceeding under subsection (c), the Board  
 21          may recommend that the Attorney General initiate a civil  
 22          action under section 6.”.

23          (b) CAUSE OF ACTION FOR MISREPRESENTATION.—  
 24          Section 6 of the Act entitled “An Act to promote the devel-  
 25          opment of Indian arts and crafts and to create a board

1 to assist therein, and for other purposes” (25 U.S.C.  
2 305e) is amended—

3 (1) by striking subsection (d);

4 (2) by redesignating subsections (a) through (c)  
5 as subsections (b) through (d), respectively;

6 (3) by inserting before subsection (b) (as rededesignated  
7 by paragraph (2)) the following:

8 “(a) DEFINITIONS.—In this section:

9 “(1) INDIAN.—The term ‘Indian’ means an individual  
10 that—

11 “(A) is a member of an Indian tribe; or

12 “(B) is certified as an Indian artisan by an  
13 Indian tribe.

14 “(2) INDIAN PRODUCT.—The term ‘Indian  
15 product’ has the meaning given the term in any regulation  
16 promulgated by the Secretary.

17 “(3) INDIAN TRIBE.—

18 “(A) IN GENERAL.—The term ‘Indian  
19 tribe’ has the meaning given the term in section  
20 4 of the Indian Self-Determination and Education  
21 Assistance Act (25 U.S.C. 450b).

22 “(B) INCLUSION.—The term ‘Indian tribe’  
23 includes, for purposes of this section only, an  
24 Indian group that has been formally recognized  
25 as an Indian tribe by—

1 “(i) a State legislature;

2 “(ii) a State commission; or

3 “(iii) another similar organization  
4 vested with State legislative tribal recogni-  
5 tion authority.

6 “(4) SECRETARY.—The term ‘Secretary’ means  
7 the Secretary of the Interior.”;

8 (4) in subsection (b) (as redesignated by para-  
9 graph (2)), by striking “subsection (c)” and insert-  
10 ing “subsection (d)”;

11 (5) in subsection (c) (as redesignated by para-  
12 graph (2))—

13 (A) by striking “subsection (a)” and in-  
14 serting “subsection (b)”;

15 (B) by striking “suit” and inserting “the  
16 civil action”;

17 (6) by striking subsection (d) (as redesignated  
18 by paragraph (2)) and inserting the following:

19 “(d) PERSONS THAT MAY INITIATE CIVIL AC-  
20 TIONS.—

21 “(1) IN GENERAL.—A civil action under sub-  
22 section (b) may be initiated by—

23 “(A) the Attorney General, at the request  
24 of the Secretary acting on behalf of—

25 “(i) an Indian tribe;

1 “(ii) an Indian; or

2 “(iii) an Indian arts and crafts orga-  
3 nization;

4 “(B) an Indian tribe, acting on behalf of—

5 “(i) the Indian tribe;

6 “(ii) a member of that Indian tribe; or

7 “(iii) an Indian arts and crafts orga-  
8 nization;

9 “(C) an Indian; or

10 “(D) an Indian arts and crafts organiza-  
11 tion.

12 “(2) DISPOSITION OF AMOUNTS RECOVERED.—

13 “(A) IN GENERAL.—Except as provided in  
14 subparagraph (B), an amount recovered in a  
15 civil action under this section shall be paid to  
16 the Indian tribe, the Indian, or the Indian arts  
17 and crafts organization on the behalf of which  
18 the civil action was initiated.

19 “(B) EXCEPTIONS.—

20 “(i) ATTORNEY GENERAL.—In the  
21 case of a civil action initiated under para-  
22 graph (1)(A), the Attorney General may  
23 deduct from the amount—

24 “(I) the amount of the cost of  
25 the civil action and reasonable attor-

1                   ney’s fees awarded under subsection  
 2                   (c), to be deposited in the Treasury  
 3                   and credited to appropriations avail-  
 4                   able to the Attorney General on the  
 5                   date on which the amount is recov-  
 6                   ered; and

7                   “ (II) the amount of the costs of  
 8                   investigation awarded under sub-  
 9                   section (c), to reimburse the Board  
 10                  for the activities of the Board relating  
 11                  to the civil action.

12                  “(ii) INDIAN TRIBE.—In the case of a  
 13                  civil action initiated under paragraph  
 14                  (1)(B), the Indian tribe may deduct from  
 15                  the amount—

16                         “(I) the amount of the cost of  
 17                         the civil action; and

18                         “(II) reasonable attorney’s fees.”;

19                         and

20                  (7) in subsection (e), by striking “(e) In the  
 21                  event that” and inserting the following:

22                  “(e) SAVINGS PROVISION.—If”.

1 **SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED**  
2 **GOODS AND PRODUCTS.**

3 Section 1159 of title 18, United States Code, is  
4 amended—

5 (1) by striking subsection (b) and inserting the  
6 following:

7 “(b) PENALTY.—Any person that knowingly violates  
8 subsection (a) shall—

9 “(1) in the case of a first violation by that per-  
10 son—

11 “(A) if the applicable goods are offered or  
12 displayed for sale at a total price of \$1,000 or  
13 more, or if the applicable goods are sold for a  
14 total price of \$1,000 or more—

15 “(i) in the case of an individual, be  
16 fined not more than \$250,000, imprisoned  
17 for not more than 5 years, or both; and

18 “(ii) in the case of a person other  
19 than an individual, be fined not more than  
20 \$1,000,000; and

21 “(B) if the applicable goods are offered or  
22 displayed for sale at a total price of less than  
23 \$1,000, or if the applicable goods are sold for  
24 a total price of less than \$1,000—



1 “(i) in the case of an individual, be  
2 fined not more than \$25,000, imprisoned  
3 for not more than 1 year, or both; and

4 “(ii) in the case of a person other  
5 than an individual, be fined not more than  
6 \$100,000; and

7 “(2) in the case of a subsequent violation by  
8 that person, regardless of the amount for which any  
9 good is offered or displayed for sale or sold—

10 “(A) in the case of an individual, be fined  
11 under this title, imprisoned for not more than  
12 15 years, or both; and

13 “(B) in the case of a person other than an  
14 individual, be fined not more than  
15 \$5,000,000.”; and

16 (2) in subsection (c), by striking paragraph (3)  
17 and inserting the following:

18 “(3) the term ‘Indian tribe’—

19 “(A) has the meaning given the term in  
20 section 4 of the Indian Self-Determination and  
21 Education Assistance Act (25 U.S.C. 450b);  
22 and

23 “(B) includes, for purposes of this section  
24 only, an Indian group that has been formally  
25 recognized as an Indian tribe by—

- 1 “(i) a State legislature;  
2 “(ii) a State commission; or  
3 “(iii) another similar organization  
4 vested with State legislative tribal recogni-  
5 tion authority; and”.

